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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ARTURO ACRISTIAN,

Petitioner,

v.

FRANK X. CHAVEZ, Warden,

Respondent.

Case No. CV 13-6738-JFW (KK)

**ORDER RE SUMMARY DENIAL OF
PETITIONER'S RULE 60(b) MOTION
FOR RELIEF FROM A JUDGMENT,
ORDER OR PROCEEDING**

On July 20, 2015, following the entry of judgment, and denial of a previous motion to reopen his case, Petitioner Arturo Acristian ("Petitioner"), proceeding pro se, filed a Motion for Relief from a Judgment, Order or Proceeding Under Federal Rule of Civil Procedure Rule 60(b). (ECF Docket No. ("dkt.") 43). For the reasons that follow, Petitioner's Motion is DENIED.

I.

PROCEDURAL SUMMARY

On November 12, 2013, Petitioner filed a Writ of Habeas Corpus under 28 U.S.C. § 2254 ("Petition"). (Dkt. 1). On April 18, 2014, Respondent filed its Answer and Return. (Dkt. 22). On June 2, 2014, Petitioner filed his Traverse. (Dkt. 27).

On September 2, 2014, the Magistrate Judge issued a Report and

1 Recommendation recommending that this Court deny the Petition. (Dkt. 31).

2 Petitioner failed to file objections, or request an extension of time to do so within the
3 time permitted.

4 On October 22, 2014, the Court accepted the Report and Recommendation and
5 issued Judgment that the Petition be denied and the action dismissed with prejudice.
6 (Dkt. 32, 33). The Court also denied Petitioner's request for a certificate of
7 appealability, and the case was closed. (Dkt. 34).

8 Thereafter, on November 17, 2014, Petitioner filed a Motion to Reopen his case,
9 along with a request for an extension of time to file objections. (Dkt. 35). Petitioner
10 stated he had just been placed in Administrative Segregation and needed additional
11 time to file objections, because he did not have access to his legal documents. Id. On
12 November 20, 2014, the Magistrate Judge issued an order directing Petitioner to state
13 the nature of his objections no later than December 19, 2014. (Dkt. 36).

14 On December 17, 2014, Petitioner filed a letter with the Court which appeared to
15 state partial objections, but which primarily sought further time to comply with the
16 November 20, 2014 order, because Petitioner was still in Administrative Segregation.
17 (Dkt. 40).

18 On January 8, 2015, the Court issued an order denying Petitioner's Motion to
19 Reopen his case and request for an extension of time to file objections, because
20 Petitioner failed to demonstrate entitlement to relief under Federal Rules of Civil
21 Procedure 59(e) and 60(b). (Dkt. 41). Finally, on January 9, 2015, Petitioner filed
22 Objections to the Report and Recommendation. However, because the Court had
23 already denied leave to re-open and denied Petitioner's request for an extension of
24 time, the Court rejected the Objections and the document was not filed. (Dkt. 42).

25 On July 20, 2015, Petitioner filed the instant Motion pursuant to Rule 60(b)
26 requesting relief from the Judgment and the Court's January 16, 2015 Order rejecting
27 Petitioner's Objections for filing. (Dkt. 43). Petitioner also appears to seek a
28 certificate of appealability and a tolling of the time limits for appealing the Judgment.

1 Id.

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3 **II.**

4 **DISCUSSION**

5 **A. Petitioner Is Not Entitled To Relief Under Fed. R. Civ. P. 60(b)**

6 Petitioner argues he was unable to file timely objections or appeal the Judgment
7 due to (1) his language difficulties, (2) his transfer to Administrative Segregation
8 Housing, and (3) prison officials preventing him from obtaining his legal documents
9 from another inmate who was assisting him in preparing his objections. Mot. at 3.

10 Rule 60(b) provides for extraordinary relief and may be invoked only upon a
11 showing of exceptional circumstances. Engleson v. Burlington N.R. Co., 972 F.2d
12 1038, 1044 (9th Cir. 1994) (citing Ben Sager Chem. Int'l v. E. Targosz & Co., 560
13 F.2d 805, 809 (7th Cir. 1977)). Under Rule 60(b), the court may grant reconsideration
14 based on: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly
15 discovered evidence which by due diligence could not have been discovered before the
16 court's decision; (3) fraud by the adverse party; (4) the judgment is void; (5) the
17 judgment has been satisfied; or (6) any other reason justifying relief. Fed. R. Civ. P.
18 60(b).

19 "Excusable neglect is an equitable concept that takes account of factors such as
20 'prejudice, the length of the delay and impact on judicial proceedings, the reason for
21 the delay, including whether it was within the reasonable control of the movant, and
22 whether the movant acted in good faith.'" Franchise Holding II, LLC. v. Huntington
23 Restaurants Grp., Inc., 375 F.3d 922, 927 (9th Cir. 2004) (affirming denial of Rule
24 60(b)(1) motion to set aside default judgment); see also Engleson v. Burlington N.
25 R.R. Co., 972 F.2d 1038, 1043 (9th Cir.1992) (articulating that "[t]o qualify for
26 equitable relief under Rule 60(b)(1), the movant *must demonstrate* ... excusable
27 neglect" and noting "[n]either ignorance nor carelessness on the part of the litigant or
28 his attorney provide grounds for relief under Rule 60(b)(1)") (citation and internal

1 quotation marks omitted) (emphasis added).

2 Federal Rule of Civil Procedure 60(b)(3) states the Court may relieve a party of
3 a final judgment or order by reason of “fraud . . . , misrepresentation, or misconduct by
4 *an opposing party*.” Fed. R. Civ. P. 60(b)(3) (emphasis added). To prevail under Rule
5 60(b)(3), “the moving party must establish that a judgment was obtained by fraud,
6 misrepresentation, or misconduct, and that the conduct complained of prevented the
7 moving party from fully and fairly presenting the case.” In re M/V Peacock on
8 Complaint of Edwards, 809 F.2d 1403, 1404-05 (9th Cir. 1987).

9 Rule 60(b)(6) is a “catchall provision” that applies only when the reason for
10 granting relief is not covered by any of the other reasons set forth in Rule 60. United
11 States v. Washington, 394 F.3d 1152, 1157 (9th Cir. 2005), overruled on other grounds
12 by United States v. Washington, 593 F.3d 790 (9th Cir. 2010). “It has been used
13 sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only
14 where extraordinary circumstances prevented a party from taking timely action to
15 prevent or correct an erroneous judgment.” Id. (internal quotation marks omitted).
16 Thus, to reopen a case under Rule 60(b)(6), a party must establish “both injury and
17 circumstances beyond his control that prevented him from proceeding . . . in a proper
18 fashion.” Id. (internal quotation marks omitted). See also Lafarge Conseils Et. Etudes,
19 S.A. v. Kaiser Cement & Gypsum Corp., 791 F.2d 1334, 1338 (9th Cir.1986) (“A
20 motion brought under [Rule] 60(b)(6) must be based on grounds other than those listed
21 in the preceding clauses.”).

22 Here, Petitioner has failed to establish exceptional circumstances that warrant
23 relief under Rule 60(b). Petitioner failed to timely object or request an extension to
24 object to the Report and Recommendation. Judgment was not entered until 50 days
25 after the Court issued the Report and Recommendation. Without having prepared
26 objections, Petitioner waited another month after the Court entered Judgment to
27 request an extension of time to file objections. Petitioner argues he wrote numerous
28 letters to the Court during this time requesting extensions of time to file objections,

1 because he was unable to obtain his legal documents. See Petitioner's Declaration in
2 Support of Motion ("Pet. Decl.") at ¶7. However, the Exhibits attached to Petitioner's
3 Declaration and the record show Petitioner did not begin requesting extensions until a
4 month after Judgment had already been entered. Pet. Decl. Ex. 3. Despite the Court's
5 November 20, 2014 Order directing Petitioner to state the nature of his objections by
6 December 19, 2014, Petitioner failed to do so within the additional time permitted.
7 Moreover, Petitioner raises no grounds in this Rule 60 Motion for reopening this
8 matter that were not previously presented to the Court and ruled on in the Court's
9 January 8, 2015 Order.

10 **B. Petitioner Is Not Entitled To Relief From The Time Limit To Appeal**
11 **Judgment**

12 Lastly, Petitioner is not entitled to relief from the time limit to appeal the
13 Judgment, because Petitioner waited well over six months (180 days) from entry of the
14 Judgment to file the instant Motion. See In re Stein, 197 F.3d 421, 425 (9th Cir. 1999),
15 as amended on denial of reh'g (Jan. 5, 2000) ("Rule 4(a)(6) provides the exclusive
16 means for extending appeal time for failure to learn that judgment has been entered.
17 Once the 180-day period has expired, a district court cannot rely on the one-time
18 practice of vacating the judgment and reentering the same judgment in order to create a
19 new appeal period.").

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III.

ORDER

IT THEREFORE IS ORDERED that Petitioner's Motion be summarily denied, pursuant to Federal Rule of Civil Procedure 60(b).

DATED: July 28, 2015


HON. JOHN F. WALTER
UNITED STATES DISTRICT JUDGE

Presented by:



Kenly Kiya Kato
United States Magistrate Judge